Tee Wee Kok v Teh Liang Teik & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO S-24–1124 OF 2009
PRASAD ABRAHAM JC
9 FEBRUARY 2010

Mental Disorder and Treatment — Inquiry — Application for — First defendant's state of mind — Whether mental disorder and/or incapable of managing himself and his own affairs — Whether appropriate case to grant prayers — Mental Disorder Act 1952 ss 3, 5 & 6

The first defendant ('TLT'), who was in his late eighties, was the father of the plaintiff and the second, third, fourth and fifth defendants. He had suffered from a 'multiple strokes' in July 2003, after returning from Hong Kong. Whilst the first defendant was coping with his medical predicament, dispute arose between the siblings when the second defendant was appointed as the managing director of Malayan Flour Mills Bhd ('MFMB'). The plaintiff was at that time a member of the board of MFMB and was holding the post as deputy managing director. The plaintiff was seeking, inter alia, an order of the court to make an inquiry as to the state of mind of the first defendant to determine whether he was mentally disordered and/or incapable of managing himself and his own affairs. Initially, the only defendant in the matter was TLT but subsequently, the second, third, fourth and fifth defendants applied successfully to intervene in the matter.

Held, dismissing the plaintiff's application with costs:

The plaintiff's application was not made in the best interest of TLT but merely to protect and preserve the position of the plaintiff in respect of the suits pending. The court could not and would not allow an application under the Mental Disorder Act 1952 which does not take interest of TLT into account but made purely to protect the plaintiff's commercial interest. Further, there had been no evidence led of unexplained dissipation where TLT had been used by the second defendant or anybody else (see para 8).

[Bahasa Malaysia summary

Defendan pertama ('TLT') yang berumur lewat 80an, ialah bapa plaintif dan defendan kedua, ketiga, keempat dan kelima. Dia telah mengalami 'multiple stroke' pada Julai 2003, setelah pulang dari Hong Kong. Sementara defendan pertama cuba mengatasi masalah perubatannya, pertikaian timbul antara adik-beradik apabila defendan kedua telah dilantik sebagai pengarah urusan Malaysian Flour Mills Bhd ('MFMB'). Plaintif pada masa itu adalah ahli

A lembaga MFMB dan telah memegang jawatan sebagai timbalan pengarah urusan. Plaintif, antara lain, memohon satu perintah mahkamah untuk membuat siasatan mengenai keadaan minda defendan pertama bagi menentukan sama ada dia terganggu secara mental dan/atau tidak mampu menguruskan dirinya dan hal ehwal dirinya. Pada mulanya, satu-satunya
B defendan dalam perkara ini ialah TLT tetapi kemudiannya, defendan kedua, ketiga, keempat dan kelima berjaya memohon untuk mencelah dalam perkara ini.

Diputuskan, menolak permohonan plaintif dengan kos:

C Permohonan plaintif tidak dibuat bagi kepentingan TLT tetapi hanya untuk melindungi dan mengekalkan kedudukan plaintif dalam tindakan-tindakan guaman yang belum diputuskan. Mahkamah tidak boleh dan tidak akan membenarkan satu permohonan di bawah Ordinan Sakit Otak 1952 yang
D tidak mengambilkira kepentingan TLT tetapi dibuat semata-mata untuk melindungi kepentingan komersil plaintif. Selanjutnya, tiada bukti yang diberikan mengenai pelesapan tidak dapat diterangkan di mana TLT telah digunakan oleh defendan kedua atau seseorang yang lain (lihat perenggan 8).]

Notes

E For cases on inquiry in general see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) paras 409–413.

Cases referred to

F *Prem Singh & Ors v Kirpal Singh* [1989] 2 MLJ 89, HC (refd)

Legislation referred to

Mental Disorders Ordinance 1952 ss 3, 5, 6

Lavinia Kumaraenderan (Thomas Phillip) for the plaintiff.
G *Teh Boon Eng (Teh & Associates) for the second defendant.*
Anad Krishnan (Anad & Noraini) for the third, fourth and fifth defendants.

Prasad Abraham JC:

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[1] This rather unfortunate matter stems from encl 1, (now encl 19) as amended ie the application of the plaintiff to seek various orders pursuant to the Mental Disorders Ordinance 1952 ('MDO') as a consequence of a bitter family feud between siblings and I set out below the prayers sought:

I (a) that pursuant to s 3 of the Mental Disorders Ordinance 1952:

(i) an inquiry be made into the state of mind of the respondent/defendant to determine whether respondent/defendant is mentally disordered and/or incapable of managing himself and his own affairs;

(ii) such other directions as may be necessary for the purposes of and consequent to the inquiry on the respondent/defendant including but not limited to the following:

(A) The time during which the respondent/defendant was of unsound mind;

(B) Determine the extent and nature of the property of the respondent/defendant.

(b) that pursuant to s 5 of the Mental Disorders Ordinance 1952:

(i) directions to be given by this honourable court as to the manner in which the notice of inquiry is to be served on the respondent/defendant;

(ii) directions be given by this honourable court for service of the notice of the time and place for inquiry.

[2] The first defendant Teh Liang Teik (TLT) is the father of the plaintiff and the second, third, fourth and fifth defendants. Originally the only defendant/respondent in the matter was TLT but later the second, third, fourth and fifth defendants applied to successfully intervene in the matter. TLT's wife and mother of TLT's children passed away on 5 April 2003.

[3] The spark that lit the fuse of this bitter family feud was when on the 18 April 2002, the second defendant was appointed the Managing Director of Malayan Flour Mills Berhad (MFMB). The plaintiff was at that time a member of the board of MFMB and was holding the post as deputy managing director. In April 2002, the second defendant was appointed to succeed TLT at the helm of MFMB which at that material time was controlled through TLT's direct shareholding and via TLT's in direct shareholding in MFMB via several companies controlled by TLT (the Teh Companies) which held substantial shares in MFMB. The stage was set for a classicus bitter family dispute. TLT lived in the family home at 8 Jalan U-Thant (the family home) since 1966 together with the plaintiff and his family and the second defendant and his family.

[4] In early 2001, TLT had a stroke after returning from a business trip to Vietnam accompanied by the second defendant and faced 'multiple strokes' in July 2003 after returning from Hong Kong and was hospitalised for a month. The plaintiff claims he was prevented from visiting TLT or informed of his actual medical condition and whilst TLT was coping with his medical predicament, the feud between siblings had entered the arena of the courts. Very briefly the various court actions initiated in the main by the plaintiff were as follows:

A (1) Litigation involving a deed of gift and a declaration as to its validity (the D6 suit) which is still pending. The plaintiff is one of the claimants in the D6 suit and the suit is still pending.

(2) The plaintiff is one of the petitioners in Originating Petition D2–26–44 of 2003 which is also still pending.

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(3) There was also a habeas corpus application in the Kuala Lumpur criminal court, Criminal Application No 44–79 of 2003 for a writ of habeas corpus for TLT to be brought to court and to be released. The hearing proceeded for 2½ years and on 29 June 2006 the said proceedings were withdrawn.

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(4) There was a suit filed in the High Court S2–22–362 of 2005 seeking various orders amongst others:

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(a) that the second defendant (as first defendant in the S2 suit) be restrained from having contact with TLT;

(b) that the second defendant be restrained from dealing with or disposing of any of the assets of TLT;

(c) for the care and supervision of TLT;

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(d) for the second defendant to deliver an account of assets of TLT; and

(e) for the appointment of a receiver and manager of the assets of TLT.

F **[5]** The said suit was struck out on the application of the second defendant. Subsequent to the filing of this application, the plaintiff filed an application pursuant to s 6 of the MDO for a preliminary examination of TLT by the court and the appointment of a professional medical examiner to examine the physical and mental capacity of D1. That application was dismissed as the court was of the view it ought to have been heard after this application.

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[6] I am minded of the dictum of His Lordship Abdull Hamid Embong J (as he then was) in dealing with an application under the MDO 1952:

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> In short an inquiry under the MDO would not be ordered as a matter of course and where no prima facie case is established after such a preliminary inquiry, the application may be rejected in limine.

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[7] The plaintiff in their written submissions submit the plaintiff is in a 'vegetative state' and access to him is being blocked to the plaintiff and the plaintiff relies on the photographs TWK9 encl 2 and the affidavits of non-service at encll 4, 5, and 10. The plaintiff also submits that TLT has not affirmed any affidavits apart from one affirmed in July 2003 despite numerous allegations made against TLT.

[8] The defendant deny these contentions. A careful scrutiny of the plaintiff's affidavit in support encl 2 will give an inkling of the plaintiff's motivation in moving this application against TLT, his father. Reference is made to para 16 of encl 2 and in particular para 16.3. It is clear that the predominant purpose for visiting TLT was not just the emotional one but the need to take photographs to support this application. To take photographs of TLT at his weakest state in hospital and then use the same to establish TLT is in a vegetative state clearly shows the length the plaintiff will go to obtain an order the plaintiff seeks. These paragraphs also show TLT was being well treated and the plaintiff had access to TLT despite being insensitive about the 'taking of photographs'. Going through para 18 of encl 2, it is abundantly clear that the sole aim of this application is related to the suits that are afoot. In encl 11, paras 7–12 again the averments of the plaintiff relate to the pending suit. The position is the same with regards to paras 14–19 of encl 22. The court is of the view that the plaintiff's application is not made in the best interest of TLT but merely to protect and preserve the position of the plaintiff in respect of the suits pending. The court cannot and will not allow an application under the MDO which does not take the interest of TLT into account but made purely to protect the plaintiff's commercial interest. Nowhere in the affidavits of the plaintiff is mention made of TLT and the required treatment being planned for him. This is because TLT is already getting, the required treatment and the plaintiff has had unfettered access to TLT at Gleneagles, where the plaintiff chose to use that opportunity to take photographs to lay the basis of this application. Further there has been no evidence led of unexplained dissipation where TLT has been used by second defendant or anybody else.

[9] I make reference to the case of *Prem Singh & Ors v Kirpal Singh* [1989] 2 MLJ 89 where it was held:

> (1) Section 3(1) of the Act clearly gives a discretion to the court to determine whether in a particular case where a person is alleged to be mentally disordered, an inquiry should be ordered. *It does not follow that an inquiry must be ordered in every case where it is shown that the person is of unsound mind and incapable of managing herself and her affairs.*
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> (2) In the present case, there is no allegation that there has been any physical assaults committed by the respondent on the patient since the mid-seventies. The patient is now being cared for and seems reasonable well settled with the respondent and her other children and there is no useful purpose in having an inquiry. In so far as her property is concerned, there is no evidence that she has anything more than the two POSB accounts and nothing has been shown that these two accounts require any special attention. Bearing in mind the object of such an inquiry and particularly the comments of Dr N, a psychiatrist, in his report that 'it is neither necessary nor desirable to put her through an inquiry, *as this may subject her to*

unwanted stress which may cause a flare-up in her symptoms', the court is of the view that the holding of an inquiry at this time would not advance the interest of the patient nor would it be to her benefit.

(3) *The court's jurisdiction under the Mental Disorders and Treatment Act should only be exercised for the benefit of a mentally disordered* person. It ought not to sanction a course of procedure which is likely to lead to further distress to the patient on account of the bitter dispute between the respondent and some of his children

[10] Chao Hick Tin JC (as he then was) said:

As I have stated in the beginning, it seems to me the conflict in the family is somewhat deep-rooted. What was the cause of the early turmoil is not known *but I have the distinct feeling that the mother, Kishen Kaur, is slowly becoming a pawn in the conflict.* She appears reasonably settled in her home and I do not see any useful purpose in having an inquiry. She has a house help to assist her in her domestic duties. In so far as her property is concerned, there is no evidence that she has anything more than the two POSB accounts. Nothing has been shown that these two accounts require any special attention. Bearing in mind the object of such an inquiry and particularly the comments of Dr Nagulendran that 'it is neither necessary nor desirable to put her through an inquiry, at this may subject her to unwanted stress which may cause a flare-up in her symptoms' I am of the view that the holding of an inquiry at this time would not advance the interest of the patient nor would it be to her benefit.

The court's jurisdiction under the Mental Disorders and Treatment Act should only be exercised for the benefit of a mentally disordered person. I do not think this court ought to sanction a course of procedure which is likely to lead to further distress to the patient on account of the bitter dispute between the respondent and some of his children.

[11] Like in the above case, this application is an attempt by the plaintiff to use TLT as a pawn in the fight against his other siblings including the second defendant. TLT has been residing in the family home since 1966 and to uproot him in his present state would only deteriorate his condition further and there has been no evidence of physical abuse or ill treatment. I am of the view that the above authority on the facts and the law is very relevant to the matter at hand.

[12] TLT is in his late eighties. Having built up MFMB, illness in the form of several strokes have incapacitated him. Now because of the bitter feud between the siblings including the plaintiff and the second defendant, the plaintiff, his son is seeking orders to be made against him under the MDO. This will not solve the problems that are afoot but it will only be instrumental in removing whatever dignity he may have despite being in a helpless state. Let TLT live out his remaining years in peace and when it is ordained that

TLT should depart, let him leave his family in peace and dignity. It is for this reason that I did not consider it necessary or in the best interest of TLT to subject him to an interview or a preliminary medical examination.

[13] I therefore dismissed the plaintiff's application with costs.

Plaintiff's application dismissed with costs.

Reported by Ashgar Ali Ali Mohamed